



The Market Abuse Regulation: Insider Lists

What has changed?

The Disclosure and Transparency Rules (DTR) currently contain the requirements for the disclosure of inside information and insider lists. Once the Market Abuse Regulation (MAR) comes into force on 3 July 2016 this will change. The Financial Conduct Authority (FCA) intends that the provisions of MAR will replace the relevant provisions of the Disclosure and Transparency Rules and direct links will be provided to MAR rather than copying out the text. The FCA has stated that the DTR will therefore become 'guidance' rather than 'rules'. Having said this, a large proportion of the new requirements on disclosure of information and insider lists remains the same under MAR as under the current Market Abuse Directive requirements as set out in the Disclosure and Transparency Rules.

What is inside information?

Under MAR the definition of inside information has broadly remained the same as under the Market Abuse Directive – i.e. it is information which:

- i) is precise;
- ii) has not been made public;
- iii) relates directly or indirectly to the company's shares or other financial instruments;
- iv) if it were to be made public would be likely to have a significant effect on the price.

However, MAR now expressly states that information which is likely to have a significant effect on price means information which a reasonable investor would be likely to use as part of the basis of investment decisions.

A company must inform the public as soon as possible of inside information that directly concerns that company except under very specific conditions. This requirement is the same as the current DTR requirement.

Insider Lists

The concept of keeping insider lists of those people who have access to a company's inside information before it is published is well established. Companies are required to keep insider lists under MAR in a similar way to that under the Market Abuse Directive. MAR requires companies or any one acting on their behalf to:

- (a) draw up a list of all persons who have access to inside information and who are working for them under a contract of employment, or otherwise performing tasks through which they have access to inside information, such as advisers, accountants or credit rating agencies;
- (b) promptly update the insider list; and



(c) provide the insider list to the FCA as soon as possible upon its request.

In addition companies must take all reasonable steps to ensure that any person on the insider list acknowledges in writing the legal and regulatory duties entailed and is aware of the sanctions applicable to insider dealing and unlawful disclosure of inside information.

Where another person acting on behalf of the company, usually an advisor, assumes the task of drawing up and updating an insider list, the company remains fully responsible for complying with the regulations and the company must always retain a right of access to the insider list.

What must an insider list contain?

MAR sets out the precise content and format of the insider list which must be kept in electronic form. Companies may keep two separate lists: a list of permanent insider list and a project list. However, those on the permanent insider list should not also appear on the project list as they are deemed to have possession of inside knowledge at all times. This may therefore involve greater consideration of the differences between the permanent and project lists and who should appear on each with more attention paid to drawing up project lists.

The information required to be on the insider list has been expanded to include additional information such as not just the date but the time the person obtained or ceased to have inside information, home telephone numbers and addresses and national identification numbers (where applicable). Companies should ensure that they have access to or can obtain the necessary personal information which may be through HR departments. A mandatory template for these lists across the EU will be in force from 3 July 2016.

Generally companies must ensure careful management and protection of inside information and who has access to files whether in hard copy or electronically. The aim should be to restrict access to as few people as possible on a need to know basis only.

Amending insider lists

Insider lists should be promptly updated, including the date of the update, in the following circumstances:

- (a) where there is a change in the reason for including a person already on the insider list;
- (b) where there is a new person who has access to inside information and needs, therefore, to be added to the insider list; and
- (c) where a person ceases to have access to inside information.

Each update must specify the date and time when the change triggering the update occurred.



For how long must insider lists be kept?

Under MAR an insider list must be kept for at least five years after it is drawn up or updated.

What Do I Need To Do?

Actions to ensure that the 3 July 2016 deadline for the implementation of MAR is met should include the following:

- Nominate a senior person, such as the Company Secretary, with responsibility for implementing the new requirements, producing the insider lists and keeping them up to date.
- Decide whether to keep both permanent and project lists.
- Review existing insider lists to ensure these are up to date and contain relevant people.
- Obtain the mandatory template(s).
- Ensure that all the necessary information is available to include on the new insider lists.
- Prepare information to send to company insiders to include information on the MAR changes, their legal duties in respect of inside information, the sanctions applicable to insider dealing and disclosure obligations and why they are on the insider list.
- Request insiders to return a signed acknowledgment that they are aware of their legal and regulatory duties and applicable sanctions and follow up to ensure that all acknowledgements are returned.
- Use local champions to explain the rules and provide translations to overseas employees to ensure these are fully understood and to liaise with the centrally nominated person on the addition and deletion of people to the insider list.
- Communicate with advisors and other persons acting on the company's behalf to ensure they are aware of the new requirements and review advisor engagement letters.
- Monitor insider lists from advisors and other persons acting on the company's behalf to ensure they have implemented the new requirements and that they are able to provide the list at short notice.
- Set up a process for providing insider lists to the FCA if requested to do so and how this is to be done.

AIM

As MAR will apply to financial instruments admitted to all multilateral trading facilities as well as regulated markets the disclosure obligations of MAR apply to AIM companies. However, there is an exemption for companies trading on SME growth markets (which is likely to include AIM) from drawing up an insider list provided that the following conditions are met:

- the company must take all reasonable steps to ensure that any person with access to inside information acknowledges their legal and regulatory duties and is aware of the sanctions that apply to insider dealing and unlawful disclosure of inside information; and



- the company is able to provide an insider list to the FCA on request.

The content and format of the insider list that AIM companies will need to provide to the FCA if requested is very similar to that for listed companies. The only exception is that full personal addresses and telephone numbers only need to be provided if available at the time of the request for the list from the FCA. However, the exemption won't be available until January 2018 and the London Stock Exchange has clarified that AIM companies will need to comply with the MAR requirement for keeping an insider list from 3 July 2016. In essence therefore, AIM companies may consider that they need to keep insider lists in the same way as listed companies subject to MAR.

Useful Sources

ESMA September 2015 Final Report

FCA Policy Statement (PS 16/13)

LSE – AIM Notice 44

Prism Briefing – The Market Abuse Regulation: A Summary

Prism Briefing – The Market Abuse Regulation: Disclosure Policies

Prism Briefing – The Market Abuse Regulation: Share Dealing Code

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